

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION
2:13 CR 25-1**

UNITED STATES OF AMERICA,)	
)	
Vs.)	ORDER
)	
RICHARD MARCUS WOODY,)	
)	
Defendant.)	
)	

THIS CAUSE coming on to be heard before the undersigned upon a Violation Report (#20) filed by the United States Probation Office on October 28, 2013 alleging that Defendant had violated terms and conditions of his pretrial release. At the call of this matter on for hearing it appeared that Defendant was present with his counsel, Andrew Banzhoff, and the Government was present through Assistant United States Attorney, John Pritchard, and from the evidence offered and from the statements of the Assistant United States Attorney and the attorney for the Defendant, and the records in this cause, the Court makes the following findings.

Findings: At the call of the matter, the Defendant, by and through his attorney, admitted the allegations as contained in the Violation Report. The Government introduced without objection the Violation Report into evidence.

Testimony was then presented through Robert T. Ferguson, United States Probation Officer.

The Defendant was charged in a bill of indictment (#1) filed on August 6, 2013 with one count of counterfeiting obligations of the United States in violation of 18 U.S.C. § 471 and one count of passing and uttering counterfeited obligations of the United States in violation of 18 U.S.C. § 472. A hearing was held in regard to the detention of Defendant on September 17, 2013 and on that date the undersigned entered an order releasing Defendant on a \$25,000 unsecured bond. The undersigned further set conditions of release which included the following:

- (1) The defendant must not violate any federal, state or local law while on release.
- (8)(p) Defendant shall refrain from use or unlawful possession of a narcotic drug or other controlled substances defined in 21 U.S.C. § 802, unless prescribed by a licensed medical practitioner.

On October 25, 2013, Defendant admitted to United States Probation Officer Robert Ferguson, that he had used marijuana three weeks prior to that date. Officer Ferguson administered a urinalysis test upon Defendant which tested negative for the use of controlled substances.

Discussion. 18 U.S.C. § 3148(b)(1) provides as follows: The judicial officer

shall enter an order of revocation and detention if, after a hearing, the judicial officer -----

- (1) finds that there is----
 - (A) probable cause to believe that the person has committed a Federal, State, or local crime while on release; or
 - (B) clear and convincing evidence that the person has violated any other condition of release; and
- (2) finds that ---
 - (A) based on the factors set forth in section 3142(g) of this title, there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community; or
 - (B) the person is unlikely to abide by any condition or combination of conditions of release.

If there is probable cause to believe that, while on release, the person committed a Federal, State, or local felony, a rebuttable presumption arises that no condition or combination of conditions will assure that the person will not pose a danger to the safety of any other person or the community.”

Based upon the evidence, the undersigned finds there is probable cause to believe Defendant committed at least a state crime while on release. The Defendant admitted to Officer Ferguson that he had possessed and used marijuana. The possession and consumption of marijuana is a misdemeanor under state law. N.C.G.S. § 90-95(a)(3). It does not appear the evidence shows there is probable cause to believe that Defendant committed a state felony and thus, a rebuttable presumption does not arise, pursuant to 18 U.S.C. § 3148, that no condition or combination of conditions will assure Defendant will not pose a danger to the

safety of any other person or the community.

There has been shown by clear and convincing evidence Defendant violated the condition of release that required him to refrain for use or unlawful possession of a narcotic drug unless it was prescribed by a license medical practitioner. Defendant has clearly violated this condition by possessing marijuana which is a drug which is not prescribed in this state by a licensed medical practitioner. The undersigned has further considered the factors as set forth under 18 U.S.C. § 3142(g). Considering those factors, it appears there is no condition or combination of conditions of release that will assure that Defendant will not pose a danger to the safety of any other person or the community if he is continued to be released. The Defendant has the following criminal record:

<u>Date</u>	<u>County</u>	<u>Offense</u>	<u>Conviction</u>
8/25/95	Jackson	Misdemeanor simple assault	9/12/95
12/11/95	Jackson	Misdemeanor possession of malt beverage while not age 19/20	1/18/96
4/5/97	Jackson	3 counts of misdemeanor common law forgery, felony possession of LSD	7/31/97
1/13/99	Cherokee	Misdemeanor littering	7/21/99
3/21/02	Swain	Misdemeanor possess drug paraphernalia	5/16/02
11/20/02	Jackson	Misdemeanor assault on female	12/17/02
3/21/03	Haywood	Driving while license revoked	5/22/07
4/20/03	Jackson	Driving while license revoked	9/15/03
4/25/03	Jackson	Driving while license revoked, misdemeanor possession of drug paraphernalia	9/15/03
5/3/03	Jackson	Driving while license revoked	6/2/03
5/10/03	Jackson	Misdemeanor possessing drug paraphernalia	6/2/03

9/5/03	Jackson	Driving while license revoked	6/22/04
1/14/05	Swain	Felony breaking & entering a motor vehicle, possession of burglary tools, misdemeanor breaking & entering into a coin operated machine, felony possession of stolen property	4/19/05
10/22/07	Swain	Driving while license revoked	5/15/08
11/20/07	Jackson	Driving while license revoked	5/9/11
1/15/08	Jackson	Misdemeanor larceny	1/22/08
12/13/08	Haywood	Misdemeanor larceny	7/8/09
12/20/08	Haywood	Driving while license revoked	7/8/09
5/18/09	Jackson	Misdemeanor escape local jail	6/9/09
4/24/11	Haywood	Misdemeanor assault on female	4/25/11
1/23/12	Jackson	Misdemeanor possession of stolen property	7/2/13
2/7/12	Haywood	Misdemeanor larceny	7/16/12

Defendant has the following pending charges:

1/26/13	Swain	Misdemeanor possession of marijuana, misdemeanor possession of drug paraphernalia, misdemeanor assault on female defendant released on bond
7/26/13	Swain	2 counts misdemeanor resisting an officer, felony larceny defendant released on bond
2/28/13	Swain	Felony possession counterfeit currency, uttering a forged instrument, misdemeanor resisting a public officer, felony assault upon law enforcement officer defendant released on bond
3/1/13	Swain	Felony possession of 5 or more counterfeit instruments and felony forgery of an instrument defendant released on bond
4/8/13	Haywood	Felony uttering counterfeit coin, misdemeanor possessing counterfeit instruments, felony uttering counterfeit coin, felony possessing 5 or more counterfeit instruments defendant released on bond

It appears that Defendant has 20 misdemeanor convictions and four felony convictions. As a result of the above referenced findings, the undersigned has determined to enter an order revoking the unsecured bond and the terms of pretrial release previously issued in this matter and entering an order detaining Defendant. It is the opinion of the undersigned that based upon Defendant's actions, it is unlikely that he will abide by any condition or combination of conditions of release.

ORDER

IT IS, THEREFORE, ORDERED that the terms and conditions of pretrial release are hereby **REVOKED** and it is **ORDERED** Defendant be detained pending further proceedings in this matter.

Signed: November 6, 2013

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

